

# AVIATION DRUG/ALCOHOL ABATEMENT *UPDATE*

August 1996

No. 96-2

## THE DRUG ABATEMENT DIVISION'S INTERNET HOME PAGE IS UP AND RUNNING!!

<http://www.faa.gov/avr/aamhome2.htm>

Our Home Page is available to you, and it contains valuable information about FAA's antidrug and alcohol misuse prevention programs, including:

- ✧ Applicable Code of Federal Regulation sections
- ✧ DHHS-certified laboratories
- ✧ Information for ordering custody and control forms, breath alcohol testing forms, breath alcohol technician training curriculum, and screening test technician training curriculum from the Government Printing Office
- ✧ Policy positions
- ✧ Compliance and enforcement checklists
- ✧ National Highway Traffic Safety Administration's conforming products lists
- ✧ Approved antidrug and AMPP planholders
- ✧ Sample plan submission formats for employers, contractors, consortia, and consortium members
- ✧ Sample formats for reporting alcohol misuse by part 67 medical certificate holders and for requests for release of confidential information regarding the antidrug program and the AMPP
- ✧ National Technical Information Service (NTIS) advertisement for video "Overview Of Alcohol Misuse Prevention Program For The Aviation Industry"
- ✧ Drug and Alcohol Abatement Updates (newsletters)
- ✧ Substance Abuse Professional (SAP) Guidelines
- ✧ Urine Specimen Collection Procedure Guidelines
- ✧ Glossaries and acronyms

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## POLICY POSITIONS GUIDANCE DOCUMENTS

Attached to this newsletter are 11 policy position guidance documents covering various issues relating to the implementation of drug and alcohol misuse prevention programs. You may obtain all the policy positions issued to date from our Home Page.

## REQUESTS FOR ANTIDRUG AND ALCOHOL MISUSE PROGRAM RECORDS/INFORMATION

In August 1994, the FAA changed its antidrug rule regarding the release of employee-specific program information. Previously, release of such records to a third party pursuant to an employee's written consent was permissive (*i.e.*, the rule said that employers "may" release such information with consent). After the rule change, however, **employers who receive a written consent from an employee must comply with the terms of that consent.**

Unfortunately, there seems to be some confusion regarding the records that are subject to release. It was the FAA's intent that the mandatory release provision apply to all records maintained by employers, including records created before the date of the change. Nothing in the regulation limits the disclosure requirements to documents created after the change. To the contrary, it was the FAA's goal to ensure that potential employers of applicants for safety-sensitive positions would be able to obtain any available records that would indicate whether the applicant had had a previous violation of the antidrug rule.

With proper consent from the individual, a potential employer can obtain records from each prior employer covering the period of the individual's employment during which he or she was performing safety-sensitive functions and subject to the antidrug program of the employer.

With respect to the alcohol misuse prevention program records, the beginning date from which such records could be obtained would be the date on which the employer implemented its alcohol program or the date on which the employee began to perform safety-sensitive duties for that employer, whichever date is later.

Employers should ensure that their responses to requests for records or information comport with the requests. If an individual specifically requests copies of documents, for example, the employer should provide them. Alternatively, if the individual requests "information" or "a history," the employer can prepare a narrative description of the records:

"A review of our antidrug/alcohol misuse prevention program records revealed that Joe Smith was subject to an FAA-approved antidrug program from January 23, 1991, to June 3, 1995. We have no record of any verified

positive drug test results for Mr. Smith. He was subject to an FAA-mandated alcohol misuse program from January 1, 1995, to June 3, 1995, and we have no record of any violations of the alcohol misuse prohibitions. He has not refused to submit to drug or alcohol testing.”

Employers may wish to consider using copies of actual documents, even when not specifically requested by the employee, if the information to be disclosed is adverse (*e.g.*, use the MRO notification or custody and control form if disclosing that the employee had a verified positive drug test).

## **FAA DRUG ABATEMENT SELF-DISCLOSURE POLICY**

The Compliance and Enforcement Branch, Drug Abatement Division, processes for approval or disapproval self-disclosures submitted by part 121 and/or part 135 certificate holders regarding the FAA antidrug and/or alcohol misuse prevention programs. Self-disclosure is a reporting and correction policy intended to improve safety compliance by foregoing a civil penalty where a certificate holder has promptly disclosed to the FAA an apparent violation and has taken prompt action satisfactory to the FAA to correct the violation and preclude its reoccurrence. Self-disclosures are reviewed and processed in accordance with the basic disclosure criteria outlined below.

Basic criteria for submission:

1. The certificate holder promptly and voluntarily discloses noncompliance to the FAA. The notification may be made initially to the FAA through informal communication, but in all cases must be reported to the FAA in writing, prior to FAA consideration under this policy.
2. The noncompliance is not deliberate or intentional.
3. The noncompliance does not indicate a lack of qualifications, nor does it reasonably call into question the qualifications of a certificate holder.
4. The certificate holder, upon discovery of the noncompliance, has taken or has begun to take immediate corrective action.
5. The certificate holder has taken or has agreed to take remedial action satisfactory to the FAA as may be necessary to preclude a recurrence of noncompliance. Any action agreed to be taken must be completed.

In addition, submission of a self-disclosure must also meet the spirit and intent of the program. Submission of a disclosure under circumstances such as notification of an inspection, receipt of a letter of investigation, receipt of a telephone inquiry regarding a violation, violations previously identified, etc., would not meet the intent or spirit of the program. The violator’s history regarding antidrug/alcohol misuse prevention programs is also reviewed at the time of submission.

If a certificate-holder is in noncompliance with respect to the antidrug and/or the alcohol misuse prevention program regulations, it must notify the FAA Drug Abatement Division's Compliance and Enforcement Branch immediately. Barbara Slavik is the contact person for self-disclosures and can be reached at 202-366-6629.

## DOCUMENTATION REQUIRED WHEN PRE-EMPLOYMENT TESTING IS NOT CONDUCTED

The August 19, 1994, rule amendment revised the pre-employment testing requirement to make the provision less burdensome. Before an employee performs a safety-sensitive function for the *first* time for an employer, he/she must undergo a pre-employment drug test for that employer. Thus, employers are permitted to rehire former employees without pre-employment testing them. When this is done, however, employers must be able to prove through **written documentation** that an individual was previously employed by that company in a safety-sensitive function. Examples of documents that may be used include payroll records, custody and control forms, random pool lists, etc.

## COMPARISON OF THE REQUIREMENTS OF THE ANTIDRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS

In this issue we continue to compare the requirements of the antidrug and alcohol misuse prevention programs. Included this time are the record retention requirements.

This is intended to serve as a guidance document. It does not substitute or replace the requirements found in the Code of Federal Regulations. The regulatory requirements have been paraphrased and include FAA policy, which is indicated by *italicized text*.

### DRUG

### ALCOHOL

#### ***RECORD RETENTION REQUIREMENTS***

Records shall be maintained in a secure location with controlled access.

#### ***Collection Records***

Each employer shall maintain all records related to the collection process, including all logbooks and certification statements, for two years.

Records related to the collection process (except calibration of evidential breath testing (EBT) devices) shall be maintained for a minimum of two years.

Calibration documentation shall be maintained for a minimum of five years.

**Records related to the collection process:**

- Documents relating to the random selection process.
- Collection logbooks, if used.
- Certification statements. (Collector certification, Step 5, on the custody and control form.)
- Documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine specimen.
- Quarterly statistical summaries from DHHS-certified laboratory(ies).
- Documents generated in connection with decisions to administer reasonable cause drug tests.
- Documents generated in connection with decisions to administer post-accident tests.

**Records related to the collection process:**

- Documents relating to the random selection process.
- Documentation of breath alcohol technician training.
- Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.
- Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
- Documents generated in connection with decisions to administer post-accident tests.

(NOTE: Documents generated in connection with reasonable cause/suspicion or post-accident tests should be maintained for 5 years where there are positive drug test results or violations of the alcohol misuse prohibitions.)

<b>Test Result Records</b>	
<p>Each employer shall maintain records of employee confirmed <u>positive</u> drug test results for <u>five years</u>.</p> <p>Documentation of <u>refusals</u> to take required drug tests shall be maintained for a minimum of <u>five years</u>.</p> <p>The employer shall maintain records of <u>negative</u> drug test results for <u>12 months</u>.</p> <p><b>Records related to test results:</b></p> <ul style="list-style-type: none"><li>• The employer's copy of the custody and control form.</li><li>• Records of verified test results received from the MRO, including written transmittal from the MRO, if available.</li></ul>	<p>Records of employee alcohol test results indicating an alcohol concentration of <u>0.02 or greater</u> shall be maintained for a minimum of <u>five years</u>.</p> <p>Documentation of <u>refusals</u> to take required alcohol tests shall be maintained for a minimum of <u>five years</u>.</p> <p>Records of all test results <u>below 0.02</u> shall be maintained for a minimum of <u>one year</u>.</p> <p><b>Records related to test results:</b></p> <ul style="list-style-type: none"><li>• The employer's copy of the alcohol test form, including the results of the test.</li><li>• Documents related to the refusal of any covered employee to submit to an alcohol test required by appendix J.</li></ul>

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| <ul style="list-style-type: none"> <li>• Documents related to the refusal of any covered employee to submit to a drug test required by appendix I.</li> <li>• Employers should keep a record of the date covered employees are removed from performance of a safety-sensitive function following a verified positive drug test result or violations of the alcohol misuse prohibitions for five years.</li> <li>• Written consent documents authorizing the release of test results from other employers and records of test results obtained from other employers.</li> </ul> | <ul style="list-style-type: none"> <li>• Documents presented by a covered employee to dispute the result of an alcohol test administered under appendix J.</li> </ul> |
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**MRO Records:**

Records concerning drug tests confirmed positive by the laboratory shall be maintained for 5 years, such records include:

- MRO copies of the custody and control form.
- Medical interviews.
- Documentation of the basis for verifying as negative test results confirmed as positive by the laboratory.
- Documentation concerning the MRO's verification process.
- Copies of dependency determinations, where applicable.

<b><i>Employee Evaluation, Referral, and Rehabilitation Records</i></b>	
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Each employer shall maintain records of substance abuse professional (SAP) evaluations for five years.

Each employer shall maintain records of rehabilitation for five years.

***Records related to evaluations:***

- Records pertaining to a determination by a SAP concerning a covered employee's need for assistance.
- Records concerning a covered employee's compliance with any rehabilitation program recommended by the SAP.
- MRO return to duty determinations.

Employee evaluations and referrals shall be maintained for a minimum of five years.

*Employee rehabilitation records should be maintained for five years.*

***Records related to evaluations:***

- Records pertaining to a determination by a SAP concerning a covered employee's need for assistance.
- Records concerning a covered employee's compliance with the recommendations of the SAP.

- *Records of notifications to the Federal Air Surgeon of verified positive drug test results by covered employees who hold medical certificates issued under part 67.*

- Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in appendix J by covered employees who hold medical certificates issued under part 67.

### ***Training Records***

*Training records should be retained long enough to demonstrate compliance with the EAP training requirements, if audited by the FAA.*

Records related to training shall be maintained for a minimum of two years.

*(NOTE: Employee training is not required, but employers must provide employees with certain educational materials.)*

#### ***Records related to education and training:***

- Materials on drug awareness, including a copy of the employer's policy regarding drug use in the workplace, a community service hot-line number and documentation of compliance with the requirement that the above was distributed to employees and appropriately displayed.
- Documentation of training provided to employees.
- Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug testing based on reasonable cause.
- *Documentation of recurrent training provided to supervisors who make reasonable cause testing determinations.*
- *Certification that any training conducted under appendix I complies with the requirements for such training.*

#### **Records related to education and training:**

- Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.
- Documentation of compliance with the requirement that a copy of the alcohol misuse awareness materials were distributed to employees and notification of availability given to employee representatives.
- Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
- Certification that any training conducted under appendix J complies with the requirements for such training.

<b>Other Records</b>	
<p><i>Records of <u>blind performance testing</u> should be retained long enough to <u>demonstrate compliance with the blind performance testing requirement</u>, if audited by the FAA.</i></p> <p><b><i>Records related to blind performance testing:</i></b></p> <ul style="list-style-type: none"> <li>• <i>The employer's copy of the custody and control form.</i></li> <li>• <i>Documentation of test results.</i></li> <li>• <i>Documentation of unsatisfactory performance testing results.</i></li> </ul> <p><i>Copies of <u>annual reports</u> (summarizing the drug testing program) submitted to the FAA under appendix I shall be maintained for a minimum of <u>five years</u>.</i></p>	<p><i>Copies of <u>annual reports</u> (summarizing the AMPP) submitted to the FAA under appendix J shall be maintained for a minimum of <u>five years</u>.</i></p>

## **RULEMAKING DOCUMENTS PUBLISHED**

### **AMENDMENTS TO LABORATORY CERTIFICATION REQUIREMENTS**

(49 CFR PART 40)

OST Docket Number: OST-96-1532

July 16, 1996; 61 Federal Register 37015

Final Rule; Effective Date: July 16, 1996

Summary: *Establishes provisions that would permit drug testing laboratories located outside the territory of the U.S. to participate in the Department's drug testing program.*

### **AMENDMENT TO DEFINITION OF "SUBSTANCE ABUSE PROFESSIONAL"**

(49 CFR PART 40/14 CFR PART 121)

OST Docket Number: OST-96-1533

July 17, 1996; 61 Federal Register 37222

Final Rule; Effective Date: July 17, 1996

Summary: *Consolidates the definition of substance abuse professional into 49 CFR Part 40 and adds to the definition substance abuse professionals certified by the International Certification Reciprocity Consortium.*



## **PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS; INSUFFICIENT SPECIMENS AND OTHER ISSUES**

(49 CFR PART 40)

OST Docket Number: OST-95-321

July 19, 1996; 61 Federal Register 37693

Final Rule; Effective Date: August 19, 1996

Summary:

### *Shy Bladder*

- *If the individual has not provided the required quantity of urine, the specimen shall be discarded. The collection site person shall direct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until a new specimen has been provided.*
- *If the individual refuses to drink the fluids needed to produce a sufficient specimen or declines to report for a medical evaluation when directed or does not comply with the physicians directions during the examination, then the employee has refused to submit to testing.*
- *A medical condition for failure to provide a sufficient specimen includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.*

### *Body Temperature*

- *Permits taking an individual's temperature by any medically-accepted means (other than use of a rectal thermometer).*

### *Unresolved Confirmed Positives*

- *The MRO may verify a test as positive without having communicated directly with the employee when neither the MRO nor the designated employer representative, after making all reasonable efforts, has been able to contact the employee within 14 days of the date on which the MRO receives the confirmed positive test result from the laboratory.*

### *Reporting Split Sample Results*

- *The MRO shall report the results of the test of a split specimen to both the employee and the employer.*
- *An employer, MRO, or laboratory cannot require, as a prerequisite to conducting the test of a split specimen, that the employee first produce payment. Subsequently, the employer could seek payment from the employee.*

### *Electronic Signatures*

- *The use of electronic signatures by any participant in the program (e.g., the collector, donor, BAT, STT, MRO, certifying scientist) is not currently authorized. Pen-and-ink signatures on hard copy forms are mandatory in the program.*

## **AMENDMENTS TO PRE-EMPLOYMENT ALCOHOL TESTING REQUIREMENTS**

(14 CFR PART 121)

OST Docket Number: OST-96-1333; Notice 96-14

May 9, 1996; 61 Federal Register 21149

Notice of Proposed Rulemaking; Comments Due: July 8, 1996

Summary: *Proposes provisions that would implement a recent statutory change to pre-employment alcohol testing provisions of the Omnibus Transportation Employee Testing Act of 1991. The proposal would harmonize the regulations with the statute by making pre-employment testing voluntary for employers.*

## **OST ISSUES ADVANCED NOTICE OF PROPOSED RULEMAKING**

(49 CFR PART 40)

OST Docket Number: OST-96-1295; Notice 96-13

April 29, 1996; 61 Federal Register 18713

Advanced Notice of Proposed Rulemaking; Comments Due: July 29, 1996

Summary: *The DOT is reviewing its procedural rules for drug and alcohol testing. This review is intended to lead to a notice of proposed rulemaking to update and clarify the provisions of the rules. This ANPRM seeks suggestions for possible changes to the regulation.*

Copies of the rulemakings may be requested from the DOT FAX-on-Demand-System--(800)225-3784. Each rulemaking identifies where comments should be sent and the number of copies to send.

## **LABORATORY WITHDRAWALS**

The following laboratories have recently withdrawn from the National Laboratory Certification Program.

### **SmithKline Beecham Clinical Laboratories**

1737 Airport Way South, Suite 200

Seattle, WA 98134

WITHDREW - July 4, 1996

### **Holmes Regional Medical Center Toxicology Laboratory**

5200 Babcock St., NE

Suite 107

Palm Bay, FL 32905

WITHDREW - April 26, 1996

### **PDLA, Inc. (Princeton)**

100 Corporate Court

So. Plainfield, NJ 07080

WITHDREW - April 15, 1996

**National Psychopharmacology Laboratory, Inc.**

9320 Park W. Blvd.

Knoxville, TN 37923

WITHDREW - March 29, 1996

**Laboratory Corporation of America**

**dba LabCorp Reference Laboratory, Substance Abuse Division**

1400 Donelson Pike, Suite A-15

Nashville, TN 37217

WITHDREW - November 30, 1995

If a laboratory withdraws from the certification program, aviation employers *must select another* DHHS-certified laboratory. To verify the certification status of a laboratory, DHHS has established a telephone HELPLINE -- (800) 843-4971.

## BRIEFLY...

### FAA REVISES AVIATION MEDICAL STANDARDS AND CERTIFICATION PROCEDURES

The FAA issued a final rule on March 12, 1996, that comprehensively revises and upgrades pilot medical standards and certification procedures. The new rule amends 14 CFR parts 61 and 67 and is effective September 16, 1996. **Under the new medical standards a verified positive drug test result under a U.S. DOT drug testing program will become the basis for medical disqualification.** Previously, an established diagnosis of drug dependence was necessary for medical disqualification.

### U.S. POSTAL SERVICE SECURITY INVESTIGATIONS

The U.S. Postal Service (USPS) requires that airlines transporting mail, and their subcontractors, ensure that all employees hired after March 9, 1996, who have access to the mail receive a security screening prior to having that access. Included in the security screening is the requirement for a negative result from a test for prohibited drug use. A test conducted under the FAA's antidrug program may be used to meet the USPS requirement provided the employees have given their written consent authorizing the employer to release the test results to the USPS.

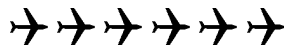
## TRANSFER OF MRO RECORDS

MROs, as agents of employers or consortia, must maintain certain records necessary for performing their duties. Since employers are responsible for complying with all recordkeeping aspects of the regulation, if you change MROs you must ensure that the former MRO forwards all records maintained pursuant to the FAA's antidrug program to the new MRO *within 10 working days* of receiving notice from the employer of the new MRO's name and address.

## CORRECTIONS TO REGIONAL DRUG ABATEMENT OFFICE LIST

The Great Lakes Region (Des Plaines, IL) telephone number is: (847) 294-8510.

The Northwest Mountain Region (Renton, WA) telephone number is: (206) 227-2022.



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400 7th Street, SW

Washington, DC 20590

*Comments or suggestions should be sent to the above address.*

